THE HON'BLE SRI JUSTICE A. GOPAL REDDY

W.P.No. 3941 of 2001

-

-

DATE: 29.8.2007

Between:

Shiva Shankar Picture Palace,
Khammam, Khammam District, represented
by its Partner: B.Sampath Kumar. … Petitioner

And

The Joint Collector, Khammam,
Khammam District and another. … Respondents.

W.P.No.3941 of 2001

ORAL ORDER:

The petitioner-Shiva Shankar Picture Palace, which is a Cinema theatre, represented by its partner B. Sampath Kumar, filed the writ petition for issuance of a writ of mandamus declaring the impugned proceedings of the 1st respondent - Joint Collector, Khammam in RC.No.C2/600/2000 dated 26.11.2000 as arbitrary and illegal by which the petitioner was imposed penalty of Rs.10,000/- under rule 4(4) of Andhra Pradesh Prevention of Disfigurement of open places and Prohibition of obscene and objectionable posters and Advertisements Act, 1997.

Before examining the legality or otherwise of the impugned order, the brief facts leading to the issuance of the impugned order may be noted. The petitioner-theatre was inspected by the 2nd respondent – Mandal Revenue Officer, Khammam (Urban) on 6.9.1999 at 7.30 p.m. During the inspection, it was found that Booking Clerk Keshava Rao and an unlicensed operator Veerababu were present. They informed that the Manager of the theatre went to Hyderabad. During the inspection, the 2nd respondent found that Telugu Film 'Gupthagnanam" is being exhibited in the theatre and on enquiry the 2nd respondent was informed that the censor certificate issued for the film is not available with him and it is with the owner of the theatre who was at Warangal at that time. When asked for the Daily Collection Record (DCR), the Mandal Revenue Officer was informed

that the same was with the Manager who went to Hyderabad. It was also found that an unlicencsed operator Veerababu is available in the cabin operating the film and on enquiry he informed that the licensed operator went to dinner and he admitted that he is not having licence. On the basis of the inspection made by him, the 2nd respondent submitted a report to the District Collector in Letter Rc.No.A/8247/99 dated 6.9.1999 for taking further action. Pursuant to the report of the 2nd respondent, Joint collector, Khammam – 1st respondent issued show cause notice in Rc.No.C3(N)1806/99 dated 8.12.1999 stating that the Management of the Theatre has violated the following cinematograph rules and conditions:

1. Censor certificate for the film 'Gupthaganam' not produced.
   Violation of Con.12(12), (15) of 'B' form licence.
2. Daily Collection Register not produced:
   Violation of Rule 13(1) of A.P.E.T. Rules, 1939.
3. Licensed Operator is not found. Unlicensed operator Veerababu is operating the film in the cabin. He has admitted that he is having no license and licensed operator went to dinner.
   Violation of Con.12(5), (10), (19) of B Form licence.
4. Whoever displays or causes to be displayed any obscene poster relating to a cinema can be penalized for Rs.10,000/- under Section 9 of A.P. Prevention of Disfigurement of open places and prohibition of obscene and objectionable posters and Advertisement Rules, 1999.

Accordingly, the 1st respondent called upon the petitioner to show cause within three days from the date of receipt of the notice as to why action under Section 10(a) or 10(2-A) of the Andhra Pradesh Cinematograph (Regulation) Act, 1955 (for brevity 'Act, 1955') should not be taken against them for violation of the afore-stated lapses.

The petitioner submitted its explanation on 23.12.1999 stating that

the film ‘Guptagnanam’ is a censored film and Central Board of Films Certification gave a censor certificate to the film vide Certificate No.4332 dated 29.8.1978 and that as the Manager of the theatre had gone to Hyderabad the certificate could not be produced at the time of inspection. With regard to the allegation that DCR has not been produced, it was explained that as the same was in the personal and safe custody of the manager, who had gone to Hyderabad on that day, the record could not be produced before the MRO at the time of inspection. The Censor certificate and the DCR were produced before the MRO on the next day. Petitioner also explained that the licensed operator has gone downstairs and as such his Assistant Veerababababu was present at the time of inspection and the licenced operator Jaleel returned to the cabin within short time. As regards displaying of obscene posters relating to the cinema, the petitioner explained that it is the distributor who got the posters printed as per the scenes in the movie after due certification and sent the same along with the film box and that they only pasted the posters within the campus of the auditorium for the viewing of the audience but they were not placed at the open places or the public places and they are not objectionable nor obscene.

Not satisfied with the explanation offered by the petitioner to the show cause notice, the licensing authority viz., Joint Collector by the impugned order in Rc.No.C/1806/99 dated 20.5.2000 imposed penalty of Rs.10,000/- under Section 10(2A) of Act, 1955 in respect of violations 1 to 3 as pointed out in the show cause notice and called upon the petitioner to remit the amount into the treasury. Pursuant to the same, the petitioner remitted the same through challan No.1487 dated 12.6.2000.

As regards Violation No.4 i.e. in regard to display of obscene

posters relating to the cinema within the premises of the theatre, vide proceedings in Rc.No.C2/600/2000 dated 26.11.2000 the District Collector, Khammam under rule 4(4) of A.P. Prevention of Disfigurement of Open places and prohibition of obscene and objectionable posters and Advertisements Rules, 1999 (for short " the Rules, 1999) imposed penalty to pay Rs.10,000/- payable by way of a demand draft drawn in favour of Administrative Officer, Collectorate, Khammam within fifteen days from the date of receipt of the order. The District Collector found that the explanation dated 23.12.1999 offered by the petitioner in regard to display of obscene posters is not substantive and that the management has screened the movie without valid censor certificate since the relevant censor certificate No.4332 is valid up to 28.8.1998 only.

Questioning the above order of the District Collector, the present writ petition has been filed contending that since the 1st respondent by his order dated 20.5.2000 has already imposed the penalty of Rs.10,000/- for the offences mentioned in the show cause notice dated 8.12.1999, the impugned order dated 26.11.2000 passed by the District Collector is not at all warranted. The 1st respondent cannot split up the charges and impose penalty at Rs.10,000/- twice by separate proceedings.

Heard the learned counselon for the petitioner and the learned Assistant Government Pleader for Home and perused the relevant records.

From the material on record it is clear that while the order dated 20.5.2000 has been issued by the 1st respondent, the District collector has issued the proceedings dated 26.11.2000. There is no dispute with regard to the order dated 20.5.2000 issued by the 1st respondent in respect of violations 1 to 3 since the same has been complied with

by the petitioner by remitting the amount of Rs.10,000/- imposed as penalty into the treasury.

Admittedly, the District Collector, Khammam, whose order has been challenged in the writ petition, has not been impleaded as party respondent to the writ petition, but, curiously, the Joint Collector and the Mandal Revenue Officer who cannot answer the allegations made in the writ petition are impleaded as party respondents. The 1st respondent filed counter narrating the inspection of the premises of the petitioner-theatre by 2nd respondent. Since the Joint Collector is the licensing and competent authority under Act, 1955 read with A.P. Cinema (Regulations), Rules, 1970, he issued showcause notice dated 8.12.1999 in regard to the irregularities 1 to 3 i.e. 1) exhibition of film without censor certificate, 2) non-production of daily collection report and 3) operating the film by an unlicensed operator and accordingly imposed the penalty of Rs.10,000/- vide proceedings dated 20.5.2000. As already noted, the petitioner has remitted the said amount into the treasury.

But, when we come to the violation No.4 i.e. displaying of obscene posters relating to cinema in the premises of the theatre, the Andhra Pradesh Prevention of Disfigurement of Open Places and Prohibition of Obscene and Objectionable Posters and Advertisements Act, 1997 (Act No.28 of 1997) (for short 'the Act, 1997') deals with it. The said Act has been provided for the prevention of disfigurement by objectionable or unauthorized advertisements of places open to public view and for the prohibition of printing, publishing and display of obscene posters relating to cinemas and for matters connected therewith or incidental thereto. Section 3 of the Act, 1997 provides for penalty for disfigurement by objectionable advertisements in open

places. It says that whoever affixes to, or inscribes or exhibits on any place open to public view any objectionable advertisement, shall be punished with imprisonment of either description for a term which may extend to one year or with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both. Section 7 relates to prohibition of obscene posters etc. Section 8 relates to prohibiting of printing, publishing or displaying of obscene posters relating to a cinema in a public place. Section 9 says that the Government may, as soon as may be after the commencement of the Act by notification constitute an authority or authorities for the purpose of determining all questions relating to obscenity of a poster. The Government in exercise of Section 9 of the Act, 1997 framed Rules known as A.P. Prevention of Disfigurement of Open places and prohibition obscene and objectionable posters and advertisements Rules, 1999 (for short 'the Rules, 1999'). Rule 3 specifies the authorities constituted as required under Section 9 of the Act, 1997, for the purpose of determining all questions relating to obscenity of posters including imposing of penalties In respect of Districts of the State, the Collectors and District Magistrates are the authorities specified under Section 3. Rule 4 deals with compounding offences. It provides that the authorities specified under Rule 3 are competent to compound the various offences specified in the Table mentioned under Rule 4. The offences which can be compounded as specified under the table relate to 1) printing or causing to be printed any obscene poster relating to a cinema; 2) publishing or causing to be published any obscene poster relating to a cinema; 3) distributing or causing to be published any obscene poster relating to a cinema and 4) displaying or causing to be displayed any obscene poster relating to a cinema. The compounding amount prescribed for each offence is

Rs.10,000/-. The offence alleged to have been committed by the petitioners comes under Rule 4(4) i.e. displaying of obscene posters.

From the above, it is clear that the authorities empowered with the power to impose penalty under the Act, 1955 and Act 1997 are different. While in respect of the violations 1 to 3 pointed out by the 1st respondent in the show cause notice dated 8.12.1999, the 1st respondent is the competent authority to impose the penalty under Act, 1955 read with A.P. Cinemas (Regulations), 1970, in respect of violation No.4 relating to display of obscene and objectionable posters within the premises, it is the District Collector & Magistrate who is the competent authority under Act, 1997 read with Rules,1999. Therefore, the order dated 20.5.2000 passed by the 1st respondent and the order dated 26.11.2000 are separate and distinct having been passed by two independent authorities under the relevant enactments and the rules framed thereunder. Therefore, the contention of the learned counsel for the petitioner that offences have been split up for the purpose of imposing separate penalties has no merit.

As per the record, the 2nd respondent on inspection of the theatre noticed four violations as already referred to above. Since the 1st respondent is the licensing authority notified by the Government for grant of licences under the Act, 1955 read with Regulations, 1970, he alone can take action in respect of violations 1 to 3 pointed out by the 2nd respondent. Therefore, the 1st respondent is justified in passing the order dated 20.5.2000 imposing the penalty of Rs.10,000/- for the offence under Section 10(2A) of A.P. Cinematograph Act, 1955, which has been complied with by the petitioner.

As already noted, Rule 4 of the Rules, 1999 contemplates compounding of the offences by the authorities specified under Rule 3

in relation to offences committed under the Act, 1997. In respect of the Districts, the competent authority, specified for implementation of the provisions of the Act, 1997 and the Rules made thereunder, including the imposition of penalties and compounding of the offences, is the Collector and District Magistrate. In view of the same, the jurisdiction to pass order in respect of violation No.4 under the Act, 1997 is within the exclusive domain of the Collector and District Magistrate and not the 1st respondent. Therefore, the District Collector not having been satisfied with the explanation offered by the petitioner in respect of violation No.4, rightly issued the showcause notice dated 26.11.2000 imposing the penalty of Rs.10,000/- and calling upon him to remit the amount. In view of the same, the contention of the petitioner that penalty has been imposed twice has no merit.

However, the record does not indicate that the petitioner has admitted his guilt and agreed for compounding of the offence. Since the District Collector has not been impleaded as party to the writ petition, it is not possible to know as to how the impugned order dated 26.11.2000 came to be passed imposing the penalty of Rs.10,000/- under Rule 4(4) when the petitioner has not offered his willingness to compound the offence of displaying the obscene posters in the premises of the theatre. Compounding of the offence under Rule 4 of the rules, 1999 arises only in cases where the offender admitted the guilt and agreed to compound the offence. Since there is no material placed on record to show that the petitioner had agreed for compounding the offence and since the Collector who passed the impugned order under the Act, 1997 and the Rules, 1999, compounding the offence and imposing the penalty of Rs.10,000/- under Rule 4(4), has not been impleaded as party respondent, no relief can be granted to the petitioner. Apart from that, the penalty of fine

amount that can be imposed under Rule 4(4) while permitting to compound the offence is Rs.10,000/-, whereas the maximum penalty that can be imposed under Section 10 of the Act, 1997 on conviction for the offence punishable under Section 8 is imprisonment which may extend to six months or with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both. Therefore, the maximum penalty that can be imposed on an offender violating the provisions of Section 8 of the Act, 1997, in the absence of willingness to compound the offence is either imprisonment which may extend to six months or fine of Rs.5,000/- or with both.

In view of the above circumstances, the petitioner is directed to make a representation to the Collector to reconsider the order dated 26.11.2000 and on such representation made by the petitioner, it is open for the District Collector, Khammam to pass appropriate orders taking into consideration the material on record and also keeping in view the facts and circumstances of the case.

The Writ Petition is disposed of with the above directions. There shall be no order as to costs.

A copy of this order be communicated to the District Collector, Khammam.

29th August, 2007

_____

A. GOPAL REDDY, J

vtv